

Message Text

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ORIGIN EB-07

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DRAFTED BY EB/ICD/FTD:AJWILLIAMS:DLB

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EA:LEDMOND

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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E.O. 11652:N/A

TAGS: ETRD, RP

SUBJECT:COTTON CONTRACT PROBLEM

REF: (A) MANILA 2839, (B) STATE 187654, (C) MANILA 2191

(D) STATE 20047, (E) STATE 211536

1. WE SUGGEST THE FOLLOWING RESPONSE BE GIVEN TO DBP
LETTER QUOTED REF (A):

(A) QUOTE THANK YOU FOR YOUR LETTER OF (DATE) CONCERNING
THE LETTER FROM YUPANGCO COTTON MILLS, INC., TO THE DBP
DATED FEBRUARY 10, 1976.

(B) THE POSITION OF THE GOVERNMENT OF THE UNITED STATES
REMAINS UNCHANGED: LETTERS OF CREDIT FOR THE SALES LISTED
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ON THE ANNEX OF THE ASSURANCES PROVIDED BY THE GOVERNMENT

OF THE PHILIPPINES SHOULD BE OPENED IN ACCORDANCE WITH THE PROVISIONS OF THOSE ASSURANCES. REGARDING YUPANGCO'S QUALITY CLAIMS, THE INTERNATIONAL COTTON TRADE HAS AN ESTABLISHED ARBITRATION PROCEDURE FOR SETTLING SUCH CLAIMS. CIEC AGREED MONTHS AGO TO SUBMIT YUPANGCO'S QUALITY CLAIMS TO ARBITRATION, PROVIDED ONLY THAT SAMPLES WERE DRAWN UNDER THE CORRECT ARBITRATION PROCEDURE. IN ADDITION, CIEC AGREED, IN WRITING, TO PAY ANY ARBITRATION AWARD MADE TO THE

MILL. YUPANGCO HAS NEVER REPLIED TO THIS OFFER.

(C) REGARDING YUPANGCO'S REQUEST TO TRANSFER L/C NO. SP 21577 ON SALE 439 TO SALE 31, CCC HAS ALREADY MADE DISBURSEMENT BASED ON VALID L/C AND SHIPPING DOCUMENTS AND CANNOT NOW TRANSFER THE L/C TO ANOTHER CONTRACT.

(D) MY GOVERNMENT IS VERY APPRECIATIVE OF THE DBP'S ASSISTANCE WITH OTHER CONTRACTS LISTED UNDER THE ASSURANCES, BUT WE DO NOT BELIEVE YUPANGCO'S CONTINUING RESISTANCE TO FULFILLING VALID CONTRACTS IS CONSISTENT WITH EITHER THE ASSURANCES OR THE DBP'S POLICY OF ENFORCING THOSE ASSURANCES. WE SINCERELY HOPE, THEREFORE, THAT THE DBP WILL SEE FIT TO PERSUADE YUPANGCO TO HONOR ITS CONTRACTUAL COMMITMENTS AS SO MANY OTHER PHILIPPINE MILLS HAVE CHOSEN TO DO. UNQUOTE.

(E) COMPLIMENTARY CLOSE.

2. BACKGROUND OF PROBLEM AND USG POSITION REMAINS AS STATED PARA 2 AND 3 REF (B). FYI ONLY-EMBASSY SHOULD COUNTER ANY CLAIM BY DBP OR YUPANGCO THAT COURT CASE RATIFIES YUPANGCO'S QUALITY CLAIMS, SINCE WE BELIEVE THESE CLAIMS SHOULD BE CONSIDERED AND JUDGED BY A QUALIFIED ARBITRATION BOARD. CIEC CHOSE NOT RPT NOT TO OPPOSE COURT CASE BECAUSE OF DISTRUST OF PHILIPPINE COURTS AND FEAR OF HIGH LAWYERS' FEES WITH NO RESULTS. IN RETROSPECT, THIS MAY HAVE BEEN WRONG DECISION, BUT EVEN IF CIEC HAD DELAYED OR WON CASE, NO ONE CAN SAY THAT YUPANGCO WOULD THEN HAVE OPENED L/C'S. END FYI. INGERSOLL

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